# STATE OF MICHIGAN

# COURT OF APPEALS

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| GREENBROOKE PARKHOMES CONDOMINIUM ASSOCIATION,<br><br>Plaintiff/Counter-Defendant-Appellant, | UNPUBLISHED<br>March 13, 2012 |
| v | No. 301516<br>Oakland Circuit Court |
| HOUSEHOLD FINANCE CORPORATION III and ANTHONY LACEY,<br><br>Defendants/Counter-Plaintiffs-Appellees. | LC No. 2010-108717-CH |

Before: STEPHENS, P.J., and CAVANAGH and SAAD, JJ.

PER CURIAM.

Plaintiff, Greenbrooke Parkhomes Condominium Association, appeals as of right an order denying its motion for summary disposition. The court also granted judgment, pursuant to MCR 2.116(I)(2), in favor of defendants, Household Finance Corporation III (HFC) and Anthony Lacey. We affirm.

Plaintiff argues that the trial court erred in denying its motion for summary disposition because collateral estoppel bars relitigation of the only dispositive issue in this case, which is the priority of plaintiff's lien interest with respect to HFC's mortgage interest. We disagree.

The application of collateral estoppel is a question of law that this Court reviews de novo. *Estes v Titus*, 481 Mich 573, 578-579; 751 NW2d 493 (2008). In addition, "this Court reviews de novo a trial court's decision on a motion for summary disposition." *Cedroni Assoc v Tomblinson, Harburn Assoc*, 290 Mich App 577, 584; 802 NW2d 682 (2010). Greenbrooke moved for summary disposition pursuant to MCR 2.116(C)(10). When reviewing a motion for summary disposition brought under MCR 2.116(C)(10), this Court considers the pleadings, affidavits, and other evidence in the light most favorable to the nonmovant. *Cedroni*, 290 Mich App at 584. The motion for summary disposition should be granted "if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). A genuine issue of material fact exists when "reasonable minds could differ . . . after viewing the record in the light

most favorable to the nonmoving party." *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

Collateral estoppel bars relitigation of an issue when: "(1) a question of fact essential to the judgment [was] . . . actually litigated and determined by a valid and final judgment; (2) the same parties . . . had a full and fair opportunity to litigate the issue; and (3) there [is] . . . mutuality of estoppel." *Monat v State Farm Ins Co*, 469 Mich 679, 682-684; 677 NW2d 843 (2004). Courts are reluctant to apply claim preclusion doctrines when questions of law are involved and the causes of actions do not arise from the same subject matter or transaction. *Young v Edwards*, 389 Mich 333, 338; 207 NW2d 126 (1973). One reason for this aversion is that "such preclusion might unduly delay needed changes in the law and might deprive a litigant of a right that the court was prepared to recognize for other litigants in the same position." *Id*. at 339.

Collateral estoppel requires that the same parties, or their privies, "had a full and fair opportunity to litigate the issue" in the previous suit. *Monat*, 469 Mich at 682-684. A person is in privy to a party if, after the judgment, the person "has an interest in the matter affected by the judgment through one of the parties, such as by inheritance, succession, or purchase." *Husted v Auto-Owners Ins Co*, 213 Mich App 547, 556; 540 NW2d 743 (1995), aff'd 459 Mich 500 (1999). Finally, the use of collateral estoppel can be qualified or rejected when barring a subsequent claim under this doctrine would override public policy or result in manifest injustice. *Storey v Meijer, Inc*, 431 Mich 368, 377 n 9; 429 NW2d 169 (1988); *Horn v Dep't of Corrections*, 216 Mich App 58, 64; 548 NW2d 660 (1996).

Plaintiff claims that it is entitled to judgment as a matter of law because the only issue in the case – the priority of its lien with respect to HFC's mortgage interest – is barred from relitigation under collateral estoppel. The previous litigation upon which plaintiff relies for its collateral estoppel claim is Oakland Circuit Court Case No. 2008-089457-CH ("the previous litigation"), and was between HFC and plaintiff and involved facts very similar to the instant case. In the prior litigation HFC acquired an interest in a condominium unit in a foreclosure sale, which occurred after plaintiff filed and recorded a lien for unpaid condominium fees. Plaintiff then sought the previous owner's unpaid association fees from HFC. HFC refused to pay and argued that it obtained the interest and rights held by the original mortgagee, First Banc, so its interest was superior to plaintiff's lien. The trial court in the previous case disagreed, concluded that plaintiff's lien was superior, and ordered HFC to pay the overdue assessments incurred during Gibson's ownership of the property.

The trial court in this case correctly concluded that collateral estoppel does not apply to the instant case. First, the application of collateral estoppel requires that a *question of fact* essential to the instant case was previously litigated and decided by a final and valid judgment. See *Monat*, 469 Mich at 682-684. The issues in both the previous litigation and this case involve questions of law, not questions of fact. In the previous case, there were no fact questions involved and the court resolved it based upon its interpretation of the Condominium Act, MCL 559.208(1), the race-notice statute, MCL 565.25, and common-law real property principles. In the instant case, the parties do not dispute when the mortgage was assigned, to whom it was assigned, or when the assignments were recorded. They also do not dispute that plaintiff recorded a lien on the condominium or that the previous condominium owner did not pay all of

the assessments due during his ownership of the condominium. Rather, their dispute involves the priority of their interests in the condominium, which requires interpretation of the Condominium Act, MCL 559.208(1), the race-notice statute, MCL 565.25, and common-law real property principles. The interpretation of statutes is a question of law. *Mich Ed Ass'n v Secretary of State*, 489 Mich 194, 201; 801 NW2d 35 (2011). Furthermore, these two causes of action did not arise from the same subject matter or transaction. Instead, they arose from the separate foreclosure proceedings of two different pieces of property. Because the two causes of action arose from different subject matters and were decided based on questions of law, collateral estoppel does not apply.

Finally, collateral estoppel is not applicable because Lacey was neither a party in the previous lawsuit, nor in privy to HFC. While it is true that Lacey acquired his interest in the instant condominium unit prior to the resolution of the previous lawsuit, he was not a party to that suit and has at no time had an interest in the property. See *Husted*, 213 Mich App at 556.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Mark J. Cavanagh
/s/ Henry William Saad